

CITY OF NEWTON
IN BOARD OF ALDERMEN

ORDINANCE NO. Z-50

DATE July 15, 2009

BE IT ORDAINED BY THE BOARD OF ALDERMEN
OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended with respect to Chapter 30 **Zoning** as follows:

1. Amend **Section 30-24(f)(4)** by deleting it and inserting in its place the following language:

“(4) Cash Payment.

"a) *Eligibility.* The inclusionary unit requirements of section 30-24(f)(3) may, if proposed by the applicant in its special permit application, alternatively be met through payment of a fee in lieu of providing those inclusionary units. Such request shall be approved only if the development (a) contains no more than six dwelling units or (b) the board of aldermen, in acting upon the special permit for the development, makes specific findings that there will be an unusual net benefit to achieving the city’s housing objectives as a result of allowing a fee rather than inclusionary units. The findings shall include consideration of the appropriateness of the development site location for income-eligible households, including proximity to and quality of public transportation, schools, and other services; and the level of uncommitted funds in the receipts reserved for appropriation fund.

"b) *Fee amount.* The first two units in a development granted a certificate of occupancy shall require no fee in lieu. For each remaining unit in the development the fee in lieu shall be equal to 12% of the sales price at closing of each unit as verified by the planning and development department or if rental housing the cash payment shall be equal to 12% of the estimated assessed value of each unit as determined by the city assessor.

"c) *Fee recipient.* The fee payment shall be made to a receipts reserved for appropriation fund established by the board of aldermen. Proceeds from the fund shall be distributed equally to the Newton housing authority and the planning and development department and shall be used exclusively for construction, purchase, or rehabilitation of housing for eligible households consistent with the purposes of this Section 30-24(f) and without undue concentration of units in a limited number of locations. The authority and the department shall each maintain an ongoing record of payments to the fund on their behalf and shall report annually to the board of aldermen on the use of the proceeds for the purposes stated herein.”

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2. Amend **Section 30-24(f)** by inserting the following language at the end thereof:

“(16) Incentives.

"a) *Density*. A density bonus may be granted equal to one unit for each additional inclusionary unit provided above the number required by section 30-24(f)(3), Inclusionary Units, up to a limit where lot area per dwelling unit is decreased by up to 25% as set forth in section 30-15 table 1, the “Lot area per unit” column, provided that the proposed project, including bonus units, is consistent with the special permit requirements provided in section 30-24(d). To the extent determined by the director of planning and development to be necessary for accommodating the bonus units, increases by up to 25% in maximum building lot coverage and, where applicable floor area ratio, and decreases by up to 25% in minimum amount of open space may be allowed per the requirements of section 30-15 Table 1.

"b) *Expedited Review*. Developments in which the percentage of inclusionary units to be provided exceeds 30% of the development total shall be given expedited application and review procedures to the extent possible and to the extent consistent with assuring well-considered outcomes, through measures such as giving them scheduling priority and arranging for concurrent rather than sequential agency reviews.”

3. Amend **Section 30-24(f)(8)b)** by deleting it and inserting it its place the following language:

"b) A marketing and resident selection plan which shall:

"(i) Assure that there is no delay, denial, or exclusion from the development based upon a characteristic protected by Newton’s human rights ordinance (Section 14-34) and applicable fair housing and civil rights laws. Those laws forbid housing discrimination based on race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance programs, or the requirements of such programs.

"(ii) Include an affirmative fair housing marketing and tenant selection plan for the inclusionary units based upon the procedures established by the Massachusetts Department of Housing and Community Development (MDHCD) for marketing, local preferences, and lotteries under *Comprehensive Permit Guidelines* Section III as in effect June 1, 2009.

"(iii) Use fair methods for accepting applications and assigning units, such as accepting applications over a period of weeks; accepting applications by mail, and using lotteries to distribute units and establish waiting lists;

"(iv) Provide for local selection preferences for up to 70% of the inclusionary units, or such lower share as may be required by other applicable authorities.

Preference shall be given for qualified applicants who fall within any of the following equally weighted categories: (1) individuals or families who live in Newton; (2) households with a household member who works in Newton, has been hired to work

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in Newton, or has a bona fide offer of employment in Newton; (3) and households with a household member who attends a public school in Newton.

Preferences for those dwelling units which are designed or modified to be accessible to people with disabilities shall be assigned (a) first to households that as well as having one or more of the four preferences above also include a member needing the features of the unit, then (b) to households having none of the above preferences but that include a member needing the features of the unit, then (c) to other households having one or more of the preferences above, and then (d) to other applicants.”

4. Amend **Section 30-24(f)(1)b(ii)** by deleting it and inserting it its place the following language:

"(ii) The sales price of inclusionary units for sale shall be affordable to an eligible household having an income ten (10) percentage points lower than the maximum eligible income for that unit as provided in section 30-24(f)(1)a). For example, if the maximum eligible income for the unit is based upon household incomes at 120% of the area median income then the maximum sales price must be affordable to households at 110% of the area median income.”

5. Amend **Section 30-24(f)(1)b(iv)** by deleting it and inserting it its place the following language:

"(iv) Where three or more inclusionary units are provided in a development under section 30-24(f)(3), the eligible household income limit for at least two-thirds of the inclusionary units offered for sale (rounded to the nearest whole number) shall be not more than 80% of the area median income at the time of marketing. The eligible household income limit for the remaining inclusionary units may be set at any level(s) up to 120% of the area median income at the time of marketing.”

And by amending **Section 30-24(f)(1)** by inserting the following language at the end thereof:

“c) ‘area median income (‘AMI’)’ shall mean the median income for households within the designated statistical area that includes the city of Newton, as reported annually and adjusted for household size by the United States Department of Housing and Urban Development.”

6. Amend **Section 30-24(f)(1)b)** by inserting the following language at the end thereof:

“vi) Inclusionary units must be qualified as ‘Local Action Units’ pursuant to the requirements of the *Comprehensive Permit Guidelines* of the Massachusetts Department of Housing and Community Development, Section VI.C Local Action Units, as in effect June 1, 2009 unless:

- a. The income eligibility for the unit exceeds 80% of the area median income, or
- b. The unit is exempted from this requirement by another provision of section 30-24(f), or

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c. The unit is exempted from this requirement by a provision included in the special permit authorizing the development, based on special circumstances applicable to that development, or based on changes in the MDHCD regulations or guidelines.”

7. Amend **Section 30-24(f)(3)** by deleting it and inserting it its place the following language:

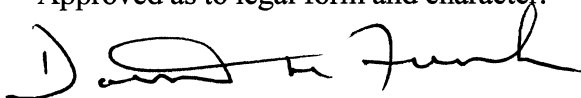
“(3) Inclusionary Units. Where a special permit is required for development as described in section 30-24(f)(2), inclusionary units shall be provided equaling no fewer than 15% of the number of dwelling units proposed to be added by the development, exclusive of existing dwelling units to be retained. For purposes of calculating the number of inclusionary units required in a proposed development, any fractional unit of 0.5 or greater shall be deemed to constitute a whole unit. Inclusionary units shall be offered for sale or rental in the same proportion of the total units as the offer for sale or rental of market rate units in the development.”

8. Amend **Section 30-24(f)(8)** by inserting the following language at the end thereof:

“f) at the discretion of the applicant and with the agreement of the Newton housing authority, an agreement, in a form approved by the city solicitor, to convey rental units to the Newton housing authority for sale or rental to eligible households; and

“g) in the case of rental housing, an agreement to submit an annual compliance report to the director of planning and development, in a form approved by the city solicitor, certifying compliance with the provisions of section 30-24(f) of the zoning ordinances; provided that in the event of a dispute over compliance, the costs of enforcement will not be borne by the Newton housing authority.”

Approved as to legal form and character:



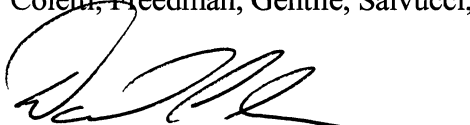
DANIEL M. FUNK
City Solicitor

Under Suspension of Rules

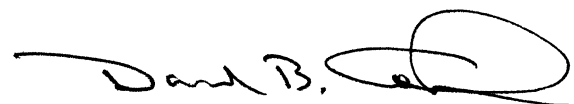
Readings Waived and Adopted

(A) Amendments 2-8 APPROVED 19 yeas 0 nays 5 absent (Aldermen Coletti, Freedman, Gentile, Salvucci, and Swiston)

(B) Amendment (1) Cash Payment) APPROVED 18 yeas 1 nay (Alderman Parker) 5 absent (Aldermen Coletti, Freedman, Gentile, Salvucci, and Swiston)



(SGD) DAVID A. OLSON
City Clerk



(SGD) DAVID B. COHEN
Mayor

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SEP 09 2009
Page 4

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